

March 17, 2022

1359

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SHERROD, TEED, VANDERHAGEN and WARE,

Plaintiffs,

-v-

Case No. 17-10164

VNA and LAN,

Defendants.

/

JURY TRIAL

BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

MARCH 17, 2022

APPEARANCES:

For the
Plaintiffs:

Corey M. Stern
Levy Konigsberg, LLP
605 Third Avenue, 33rd Floor
New York, New York 10158

Moshe Maimon
Levy Konigsberg, LLP
605 Third Avenue, 33rd Floor
New York, New York 10158

Melanie Daly
Levy Konigsberg, LLP
605 Third Avenue, 33rd Floor
New York, New York 10158

(Appearances Continued on Next Page)

TO OBTAIN A
CERTIFIED
TRANSCRIPT:

JESECA C. EDDINGTON, RDR, RMR, CRR, FCRR
FEDERAL OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
200 EAST LIBERTY STREET
ANN ARBOR, MICHIGAN 48104

March 17, 2022

1360

1 For the VNA
Defendants:

Daniel Stein
Mayer Brown LLP
1221 Avenue of the Americas
New York, New York 10020

James M. Campbell
Campbell Conroy & O'Neil, P.C.
1 Constitution Wharf, Suite 310
Boston, Massachusetts 02129

Marcus Christian
Mayer Brown LLP
1999 K Street NW
Washington, District of Columbia 20006

Mark R. Ter Molen
Mayer Brown LLP
71 South Wacker Drive
Chicago, Illinois 60606

Cheryl A. Bush
Bush, Seyferth PLLC
100 West Big Beaver Road, Suite 400
Troy, Michigan 48084

13 For the LAN
Defendants:

Wayne Brian Mason
Faegre Drinker Biddle & Reath LLP
1717 Main Street, Suite 5400
Dallas, Texas 75201

David C. Kent
Faegre Drinker Biddle & Reath LLP
1717 Main Street, Suite 5400
Dallas, Texas 75201

Tory Finley
Faegre Drinker Biddle & Reath LLP
1717 Main Street, Suite 5400
Dallas, Texas 75201

Philip A. Erickson
Plunkett & Cooney
325 East Grand River Avenue, Suite 250
East Lansing, Michigan 48823

March 17, 2022

1361

I N D E XWITNESSESPAGE

Recorded Deposition of Depin Thepin Chen Played (Continued)	1365
Recorded Deposition of Edward Benes Played.....	1372

EXHIBITSMarkedAdmitted

Plaintiff

0032.....	1366	1371
0033.....	1366	1371
0034.....	1366	1371
0035.....	1366	1371
0036.....	1367	1371
0037.....	1367	1371
0038.....	1367	1371
0039.....	1367	1371
0040.....	1367	1371
0041.....	1367	1371
0042.....	1367	1371
0043.....	1367	1371
0044.....	1367	1371
0045.....	1368	1371
0046.....	1368	1371
0047.....	1368	1371
0048.....	1368	1371
0049.....	1369	1371
0050.....	1369	1371
0051.....	1369	1371
0052.....	1369	1371
0053.....	1369	1371
0054.....	1369	1371
0057.....	1369	1371
0063.....	1370	1371

(CONTINUED ON NEXT PAGE)

March 17, 2022

1362

(CONTINUED FROM PREVIOUS PAGE)

<u>EXHIBITS</u>	<u>Marked</u>	<u>Admitted</u>
Defendant VNA		
5073.....	1370	1371

<u>MISCELLANY</u>	<u>PAGE</u>
Proceedings.....	1363
Certificate.....	1376

March 17, 2022

1363

P R O C E E D I N G S

THE CLERK: Calling Sherrod, Teed, Vanderhagen and Ware vs VNA and LAN.

THE COURT: Could we have appearances, please.

MR. STERN: Good morning, your Honor. Corey Stern and Moshe Maimon for the plaintiffs.

THE COURT: Thank you.

MR. STEIN: Good morning, Your Honor. Daniel Stein and Jim Campbell for VNA.

THE COURT: Thank you.

MR. MASON: And Wayne Mason, Phil Erickson, David Kent, and Tory Finley for LAN.

THE COURT: Thank you. And we'll bring the jury right down. But Mr. Mason, I got your message that you don't have a set number of days you want to give --

MR. MASON: Correct.

THE COURT: -- announce for the plaintiffs or yourself or anything. Okay.

Well, we'll just keep doing our best to move things along. And we learned from juror number 2 I believe it is that she has a ride this Tuesday but not Monday. Monday she'll go with her family member for the medical procedure. But Tuesday, there's somebody to take over.

So we will be off Monday, not Tuesday.

And I see Mr. Chen is ready to go. It's good to have

March 17, 2022

1364

1 somebody.

2 THE CLERK: All rise for the jury.

3 THE COURT: Good morning. Good morning.

4 I'm trying out a new mask today. My daughter brought
5 me a KF94. I think that's what it is. Seems like I can
6 breathe a little better. So you all might want to try one of
7 those one day. Please be seated.

8 And guess who's back with us. Mr. Chen is all set to
9 go.

10 Is there anything that we need to discuss before we
11 -- okay. So if you'll just remember you were watching -- I'm
12 sure you remember -- watching the video of Mr. Chen. And
13 that's his deposition. It's sworn testimony just as if he
14 were sitting here in the witness box. And at the end of it,
15 the lawyers will list out the exhibits and we'll make sure
16 that you know that they're admitted into evidence or if for
17 some reason they aren't, you would also know that.

18 Another thing I wanted to mention to everybody is
19 that the Eastern District of Michigan, we have a chief judge
20 who's kind of our like -- they don't have a role on any of our
21 cases, but they sort of have a leadership role at the court.
22 And our chief judge issued an administrative order, so an
23 order that impacts all of us, saying that juries no longer
24 need to socially distance in the jury box. And I'd like to
25 say we were ahead of the curve by a couple of days.

March 17, 2022

1365

1 But it's the official policy of the Eastern District
2 now that juries do not need to socially distance in the jury
3 box. So we're making progress but cautious. Because I see
4 now there's an uptick in corona in Europe and so on. And
5 sometimes we get that after they do. So we'll still keep a
6 close eye on it, but I feel like we're making progress.

7 So okay. So Mr. Maimon, you're going to -- so what
8 we'll do is if members of the jury, while you're listening to
9 this, if you need a break, just let me know and we'll do that.
10 It's a lot to concentrate on both sort of the words, the
11 transcript, as well as the voice questioning. So just wave.
12 Just let us know. But otherwise we'll try to go to about
13 10:15. And I think there's a total of three more hours of
14 Mr. Chen. Something like that.

15 MR. MAIMON: Something like that.

16 THE COURT: Okay. So here we go.

17 (Recorded Deposition of Depin Thepin Chen Played (continued))

18 THE COURT: So now we're going to look at those
19 exhibits and make sure we know which ones are being admitted.
20 Jeseca is back, so we're on the record.

21 Mr. Stern, are there exhibits you want to offer into
22 evidence?

23 MR. STERN: Yes, Your Honor. So I can list -- what I
24 intend to do is list the deposition exhibit number and then
25 the plaintiffs' trial exhibit number just so there's a way to

March 17, 2022

1366

1 check.

2 THE COURT: Oh, because they were only identified in
3 there with the deposition exhibit number?

4 MR. STERN: Correct.

5 THE COURT: Okay. Just give me one second.

6 MR. STERN: Sure, sure.

7 THE COURT: Okay. Go ahead.

8 MR. STERN: So deposition Exhibit Number 1 has become
9 plaintiffs' trial exhibit number 0032.

10 THE COURT: And how about I just ask counsel for VNA
11 and LAN to let me know if you have an objection. Otherwise
12 I'm not going to turn to you on each one. Okay. So that's
13 received.

14 MR. STERN: For everyone's ease, that would be tab --
15 I'll tell the tab as well so when the defendants are looking
16 at it they know what they're maybe objecting to.

17 THE COURT: Okay.

18 MR. STERN: So Tab 1, deposition 1, plaintiffs' trial
19 exhibit number 0032. Tab 2 is deposition Exhibit Number 2,
20 plaintiffs' trial exhibit number 0033.

21 THE COURT: Okay. That's received.

22 MR. STERN: Tab 3, deposition exhibit 3, it's
23 plaintiffs' trial exhibit number 0034.

24 THE COURT: Okay. That's also received.

25 MR. STERN: Tab 4, deposition Exhibit 4, 0035.

March 17, 2022

1367

1 THE COURT: Okay. That's received.

2 MR. STERN: Deposition 5 is Plaintiff's Exhibit 0036.

3 THE COURT: And that's received.

4 MR. STERN: Deposition Exhibit 6 is plaintiffs' trial
5 exhibit 0037.

6 THE COURT: That's also received.

7 MR. STERN: Deposition Exhibit 7 is plaintiffs' trial
8 exhibit 0038.

9 THE COURT: That's also received.

10 MR. STERN: Deposition Exhibit 8 is plaintiffs' trial
11 exhibit number 0039.

12 THE COURT: Okay. That's received.

13 MR. STERN: Deposition Exhibit Number 9 is
14 Plaintiffs' Exhibit 0040.

15 THE COURT: Okay. That's received.

16 MR. STERN: Deposition Exhibit 10 is plaintiffs'
17 trial exhibit number 0041.

18 THE COURT: That's received.

19 MR. STERN: Deposition Exhibit 11 is plaintiffs'
20 trial exhibit 0042.

21 THE COURT: And that's received.

22 MR. STERN: Deposition Exhibit 12 is plaintiffs'
23 0043.

24 THE COURT: Received.

25 MR. STERN: Deposition 13, Exhibit 13 is 0044 for

March 17, 2022

1368

1 plaintiffs for trial.

2 THE COURT: Okay. I don't see any objection so
3 that's also received.

4 MR. STERN: 14 deposition exhibit is 0045,
5 plaintiffs' trial exhibit.

6 THE COURT: Okay. That's received.

7 MR. STERN: Deposition Exhibit 15 is Plaintiffs'
8 Exhibit 0046.

9 THE COURT: Received.

10 MR. STERN: Deposition Exhibit 16 is plaintiffs'
11 0047.

12 THE COURT: Okay. Thank you. That's received.

13 MR. STERN: Deposition exhibit 17 is plaintiffs'
14 0048.

15 MR. CAMPBELL: I think it's 19. Deposition Exhibit
16 19 Tab 17.

17 MR. STERN: I'm sorry.

18 THE COURT: Okay. But plaintiffs' 0048 for trial?

19 MR. STERN: Yes.

20 MR. CAMPBELL: 50. 0050.

21 MR. STERN: Hang on. Forget the tab. I'm talking --
22 we don't have it in the binder. There was an issue. But it
23 was deposition exhibit 17. And that is 0048. Deposition
24 exhibit --

25 THE COURT: Let's just make sure there's no problem

March 17, 2022

1369

1 with that. I don't see any, so that will be received.

2 MR. STERN: Deposition Exhibit 18 is Plaintiffs'
3 Exhibit 0049.

4 THE COURT: Okay. That's received.

5 MR. STERN: Deposition Exhibit 19 is plaintiffs'
6 0050.

7 THE COURT: Also received.

8 MR. STERN: Deposition exhibit 20 is plaintiffs'
9 0051.

10 THE COURT: Okay. Received.

11 MR. STERN: 21 deposition is plaintiffs' 0052.

12 THE COURT: Okay. That's received.

13 MR. STERN: Deposition Exhibit 22 is plaintiffs'
14 0053.

15 THE COURT: Also received.

16 MR. STERN: Deposition exhibit 23 is plaintiffs'
17 0054.

18 THE COURT: Received.

19 MR. STERN: I'm sorry.

20 THE COURT: Go ahead.

21 MR. STERN: Deposition exhibit 26 is plaintiffs'
22 0057.

23 THE COURT: So no 55 and 56?

24 MR. STERN: Correct.

25 THE COURT: Okay.

March 17, 2022

1370

1 MR. STERN: I have one more.

2 THE COURT: Okay.

3 MR. STERN: Are you ready?

4 THE COURT: Oh, I'm ready.

5 MR. STERN: Deposition 32 is plaintiffs' 0063.

6 THE COURT: 63. Okay. That's received as well.

7 Any problems, Mr. Campbell?

8 MR. CAMPBELL: No problems, Your Honor. As I

9 mentioned during the break, we would offer --

10 THE COURT: Oh, okay.

11 MR. CAMPBELL: -- the invitation to bid that was
12 discussed during Mr. Erickson's examination. And it's VNA
13 exhibit 5073, trial exhibit 5073.

14 THE COURT: Any objection?

15 MR. STERN: I don't have any objection. I'm not --
16 that's the exhibit that Mr. Erickson -- that's the document
17 that was on the computer?

18 THE COURT: Yeah.

19 MR. STERN: I mean, I trust that that's the right
20 document. It may have had a different Bates number and all
21 that at the time. But I trust Mr. Campbell that it's the same
22 document.

23 THE COURT: Okay.

24 MR. STERN: And it wasn't offered at the deposition
25 as an exhibit.

March 17, 2022

1371

1 THE COURT: That's okay. Do you have an objection to
2 it now?

3 MR. STERN: No, ma'am.

4 THE COURT: Okay. And I don't think Mr. Mason does
5 either.

6 (Plaintiff Exhibit Nos. 0032, 0033, 0034, 0035, 0036, 0037,
7 0038, 0039, 0040, 0041, 0042, 0043, 0044, 0045, 0046, 0047,
8 0048, 0049, 0050, 0051, 0052, 0053, 0054, 0057, 0063 Admitted
9 Into Evidence.)

10 (VNA Exhibit No. 5073 Admitted Into Evidence.)

11 THE COURT: Anything else, Mr. Campbell?

12 MR. CAMPBELL: Nothing, Your Honor. Thank you.

13 THE COURT: Okay. You're welcome. All right. So we
14 have some time left.

15 This is what's going to happen next. Because we're
16 trying to press forward, make progress. We're going to hear
17 another portion of a video, just a half hour. Mr. Benes, the
18 LAN and LAD employee. And then when we come back on Tuesday
19 -- and thank you to our jury members for working so hard to
20 make sure we can keep going.

21 When we come back on Tuesday at 9:00 AM, the
22 plaintiffs have a live witness to come in. So we'll stop
23 listening to Mr. Benes at the end of today. And then probably
24 pick him back up when that witness is done. But we'll find
25 out from the lawyers at that time.

1 So and the great thing about videos is you've always
2 got a witness ready in case travel or anything should get in
3 the way.

4 So why don't we get started with Mr. Benes. And this
5 is a witness of LAN and LAD that plaintiff is calling.

6 (Recorded Deposition of Edward Benes Played)

7 THE COURT: We will wrap up for today. And for the
8 members of the jury, we will see you Tuesday, 9:00 AM back
9 here in the courtroom. So please remember all the advice
10 about not talking about the case that I've given you in the
11 past. And enjoy your time. Okay. Please rise for the jury.

12 (Jury Out)

13 THE COURT: Okay. Anything? Yes. Is this on the
14 record?

15 MR. CAMPBELL: Yes, please, Your Honor.

16 THE COURT: Okay. Sure.

17 MR. CAMPBELL: Thank you. I just wanted to confirm
18 that the only live witness that we have for next week is
19 former Mayor Walling.

20 THE COURT: Do you know, Mr. Stern?

21 MR. STERN: I believe he's our only live witness. I
22 thought that's what I had said.

23 THE COURT: Because we don't start until Tuesday.
24 And then we have Mr. Walling and then we have the rest of
25 this.

March 17, 2022

1373

1 MR. STERN: And if we get through the Benes
2 deposition, I believe we were going to move to Mr. Gadis.

3 THE COURT: Okay.

4 MR. STERN: Who is a VNA. But he's also by video.

5 THE COURT: Right.

6 MR. CAMPBELL: That's fine. That's why I asked.

7 THE COURT: Okay.

8 MR. CAMPBELL: The only information we got was that I
9 could recall was that Mayor Walling was Monday. I just wanted
10 to confirm the rest of the week. SO that's why I asked.

11 THE COURT: Thank you.

12 MR. STERN: And if we get through both Mr. Gadis and
13 Mr. Benes then we would move to Mr. Gnagy by video.

14 THE COURT: Okay. And then we'll finally know how he
15 pronounces his name.

16 MR. CAMPBELL: I think that personally I've settled
17 on Gnagy. But Gnagy.

18 MR. STERN: I just want to be clear that to the
19 extent we don't get to Mr. Gnagy next week, it doesn't mean
20 that he'll be by video the first witness we call the following
21 week. We're just trying to be judicial and judicious and
22 expedient with our witness.

23 THE COURT: You can be judicial too.

24 MR. CAMPBELL: The next item and the only other issue
25 I have is throughout that deposition of Mr. Chen, the exhibits

1 were put up and, you know, as they were discussed, they were
2 highlighted. And that process stopped about halfway through
3 the examination by Mr. McElvaine at the end. There was the
4 one exhibit with the lead testing, the Lead and Copper Rule
5 testing. And it didn't move from exhibit to exhibit like it
6 had done throughout the entire --

7 THE COURT: What didn't move, the highlighting?

8 MR. CAMPBELL: The exhibits being discussed were not
9 changed after the Lead and Copper Rule testing, number one.
10 And then number two, because the exhibits didn't change as the
11 discussion advanced in the deposition, there wasn't any
12 highlighting of the -- you know, so my only point is we need
13 to move through this efficiently.

14 And you know, I -- we trust the plaintiffs and I'm
15 sure it was just an oversight. But if we're going to
16 highlight the documents like that in a deposition, we've
17 agreed that the party presenting the deposition is the one
18 responsible for managing the transcript.

19 So if we're going to highlight -- and you know, I
20 think it's helpful for the jury. We just can't stop through
21 any part of it.

22 THE COURT: Right.

23 MR. STERN: I don't believe that that actually
24 happened that way. But if it did, I mean, I also watched an
25 exhibit that's a really good exhibit for VNA stay up for about

1 12 minutes. If we had any intention of not putting VNA
2 exhibits up, we wouldn't have left the testing data one up for
3 12 minutes.

4 So to the extent something wasn't shown, that would
5 have been an oversight. Happy to share all the videos in
6 advance so that VNA and LAN can go through them in advance.

7 THE COURT: And now Mr. Erickson.

8 MR. ERICKSON: Your Honor, I just wanted to say that
9 I noticed the same thing as Mr. Campbell, that the -- when it
10 was the Veolia interim report and the Veolia final report that
11 were discussed. And just didn't come up on the screen.
12 That's all.

13 THE COURT: Okay. Well, we'll be mindful.

14 MR. CAMPBELL: Thank you, Your Honor.

15 THE COURT: And if you want to watch the videos --

16 MR. CAMPBELL: That would be great. And you know, we
17 -- I think we asked for them. But you know, everyone's busy.
18 I didn't suggest that anyone did it on purpose.

19 THE COURT: Right.

20 MR. CAMPBELL: And you know I don't know why that
21 always follows this --

22 THE COURT: Why don't we just -- why don't we try
23 this. Just that all the video people, I'm sure they're doing
24 a lot of work and working very hard. But just be mindful of
25 what Mr. Campbell has said and we'll just take it from there.

March 17, 2022

1376

1 MR. CAMPBELL: Thank you, very much, Your Honor.

2 THE COURT: Anything else? Okay. So I will see you
3 all -- I think it would be worth planning to be here at 8:30
4 on Tuesday in the event something has come up. But if nothing
5 has, we'll get started at 9:00. And that will be that.

6 (Proceedings Concluded)

7 - - -

8

9 CERTIFICATE OF OFFICIAL COURT REPORTER

10 I, Jeseca C. Eddington, Federal Official Court
11 Reporter, do hereby certify the foregoing 18 pages are a true
12 and correct transcript of the above entitled proceedings.

13 /s/ JESECA C. EDDINGTON
14 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

03/17/2022
Date

15

16

17

18

19

20

21

22

23

24

25